

HUNTON
&
WILLIAMS

1900 K STREET, N.W.
WASHINGTON, D.C. 20006-1109

TEL 202 • 955 • 1500
FAX 202 • 778 • 2201

July 5, 2001

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KIMBERLY A. NEWMAN
DIRECT DIAL: 202-778-2225
EMAIL: knewman@hunton.com

FILE NO: 46001.000278

By Hand

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

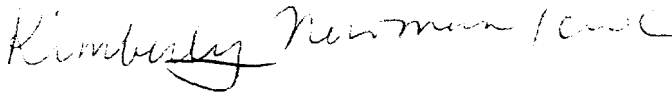
Re: *WorldCom, Cox, and AT&T ads. Verizon*
CC Docket Nos. 00-218, 00-249, and 00-251

Dear Ms. Salas:

Enclosed for filing on behalf of Verizon, please find four copies of: (1) Verizon's Objections to AT&T's Fifth Set of Data Requests; and (2) Verizon's Opposition to AT&T's Motion to Compel Answer's to AT&T's First Set of Data Requests.

Please do not hesitate to call me with any questions.

Very truly yours,



Kimberly A. Newman

cc: Dorothy T. Attwood (8 copies)(by hand)
David Levy, Esq.
Mark A. Keffer, Esq.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In the Matter of)
Petition of AT&T Communications of)
Virginia Inc., Pursuant to Section 252(e)(5)) CC Docket No. 00-251
of the Communications Act for Preemption)
of the Jurisdiction of the Virginia)
Corporation Commission Regarding)
Interconnection Disputes With Verizon)
Virginia Inc.)

**VERIZON VIRGINIA INC.'S OPPOSITION TO
AT&T'S MOTION TO COMPEL ANSWERS
TO AT&T'S FIRST SET OF DATA REQUESTS**

Pursuant to 47 CFR §§ 1.323(c) and 1.325(a)(2), Verizon Virginia Inc. ("Verizon Virginia") responds as follows to the Motion to Compel Answers served on it by AT&T Communications of Virginia, Inc. ("AT&T").

I. BACKGROUND

On or about May 31, 2001, AT&T served Verizon Virginia with a First Set of Data Requests, which included both interrogatories and requests for the production of documents. Fully anticipating Verizon Virginia's response, AT&T posed several identical inquiries on two parallel tracks: one seeking information related to Verizon Virginia operations and the other seeking information related to operations of "any Verizon affiliate" in "the Verizon footprint, except Virginia." It is this latter track which has given rise to the instant dispute.¹

¹ AT&T also seeks to compel further responses to request numbers 16, 20 and 26 on independent grounds. Verizon Virginia has agreed to amend its responses to those requests in an effort to address AT&T's concerns.

On June 4, Verizon Virginia served AT&T with its Objections to the First Set of Data Requests. These included seven general objections, as well as several objections specific to particular requests. Prior to serving the Objections, counsel for Verizon Virginia explained to counsel for AT&T that Verizon Virginia would look closely at the application of general and specific objections before refusing to respond to any particular inquiry. Counsel for Verizon Virginia invited discussion regarding any specific request, but advised counsel for AT&T that Verizon Virginia would not likely produce information unrelated to Verizon Virginia's operations in Virginia. Counsel for Verizon Virginia confirmed that position in a later telephone call.

Thereafter, on June 15, Verizon Virginia served AT&T with its Responses to the First Set of Data Requests. In those Responses, Verizon Virginia answered many requests, but refused to answer those which sought information unrelated to the Verizon Virginia operations in Virginia. On June 27, AT&T served and filed the instant Motion to Compel.

II. INTRODUCTION

AT&T asks the Commission to compel the production of information that has no bearing on the operations of Verizon Virginia. These discovery requests are directed at obtaining information that is neither "relevant to hearing issues" presented nor "reasonably calculated to lead to the discovery of admissible evidence." 47 CFR § 1.311(b).

The Commission should reject AT&T's Motion to Compel for three reasons. First, the Motion was not timely filed pursuant to 47 CFR §§ 1.323(c) and 1.325(a)(2). Second, the requests seek discovery of information that is not relevant to this proceeding from independent corporate affiliates of Verizon Virginia that are not parties to this proceeding. Third, the requests are overly broad, unduly burdensome and well beyond the scope of permissible discovery set forth in 47 CFR § 1.311(b).

III. ARGUMENT

A. AT&T's Motion Must Be Denied As Untimely.

Under the Commission's discovery rules, AT&T had to file its motion to compel "within five business days of the objection" regarding the production of documents and within seven days of "any objection or other failure to answer an interrogatory." 47 CFR §§ 1.323(c) and 1.325(a)(2). Even under the most liberal of readings, AT&T failed to meet those deadlines.

On May 31, AT&T served its First Set Of Data Requests and, on June 1, Verizon served AT&T, by hand, with timely Objections. Verizon then served AT&T, by hand, with Responses on June 15. Not until June 27 - twelve days after Verizon served AT&T with its Responses - did AT&T file its Motion to Compel. Under any construction of the Regulations, this Motion must be dismissed as untimely.

The Commission's discovery rules call for a motion to compel to be filed either five or seven days after receipt of objections. AT&T may argue, and Verizon Virginia would agree, that those deadlines must be read in light of the Procedural Order in this case that states that "parties shall negotiate diligently and in good faith concerning any discovery dispute prior to the filing of any objection." *Procedures Established for Arbitration of Interconnection Agreements Between Verizon and AT&T, Cox and WorldCom*, CC Docket Nos. 00-218, 00-249, 00-251, DA 01-270, Public Notice (CCB rel. February 1, 2001), at p. 6. Indeed, counsel for Verizon Virginia and counsel for AT&T discussed and traded telephone messages about the Requests and Verizon Virginia's Objections right up until Verizon Virginia served its Responses on June 15.

Thus, even if AT&T had until June 22 to file its Motion to Compel (*i.e.*, 7 days after receipt of Verizon Virginia's Responses), its June 26 Motion is untimely and should be summarily denied.

B. AT&T's Motion Must Be Denied As It Seeks Discovery From Corporate Entities That Are Not Parties To This Proceeding.

The Commission's discovery rules state that: "A party to a Commission proceeding may request *any other party* except the Commission to produce [documents]. . . ." 47 CFR § 1.325(a) (emphasis added); *see also* 47 CFR § 1.323(a) (Any party may serve upon *any other party* written interrogatories. . . .").

What AT&T seeks to discover here is not information from a "party" but, rather, information from the independent corporate affiliates of a party, namely Verizon Advanced Data Inc. ("VADI") and Verizon Advanced Data Virginia Inc. ("VADVA"). Neither entity, however, is a party to this proceeding, nor is information from those entities relevant to the interconnection agreement to be arbitrated in this proceeding. Instead, as Verizon Virginia explained in its response to AT&T's petition, AT&T should seek an interconnection agreement directly with those entities, just as Verizon Virginia has done.² *See* Response to Issue V-9 in Exhibit B of Verizon Virginia's Answer to Petitions for Arbitration.

Seemingly frustrated by these obvious facts, AT&T suggests to the Commission that Verizon Virginia is "hid[ing] behind the thin corporate veil between Verizon and VADI/VADVA." Motion to Compel at 5. AT&T urges the Commission to ignore this "technicality" and "pierce" the corporate veil dividing Verizon Virginia and VADI or VADVA. *Id.* at 6. From a legal standpoint, AT&T's attempt to invoke the doctrine of "piercing the corporate veil" is misplaced. That extraordinary procedure, which can only be based on

² The same is true for Verizon South Inc., the independent Verizon affiliate that services the former GTE territory in Virginia. The interconnection agreement between AT&T and Verizon Virginia that results from this arbitration will not govern the relationship between AT&T and Verizon South. Indeed, AT&T already has an interconnection agreement with Verizon South that has been approved by the Virginia Commission is in effect. AT&T has not requested renegotiation of that agreement.

extensive factual findings, is one used to impose liability, not to determine the scope of discovery.

Virginia courts will “pierce the corporate veil” to impose liability on an appropriate party when corporate formalities are not observed. To “pierce the corporate veil” in Virginia, a movant must offer more than “proof that some person ‘may dominate or control’ the corporation.” *Perpetual Real Estate v. Michaelson Properties*, 974 F.2d 545, 548 (4th Cir. 1992) (citations omitted). In fact, before a Virginia court will pierce a corporate veil, the moving party must establish that “the corporation was a device or sham used to disguise wrongs, obscure fraud or conceal crime.” *Id.* AT&T offers no proof that would justify the Commission ignoring the corporate distinction between Verizon Virginia and VADI or VADVA. Nor could it. Far from creating these entities as a “device or sham,” the separate entities were established to comply with regulatory requirements.

From a factual standpoint, AT&T is off base when it suggests that the Commission should disregard the independence of these corporate affiliates. Verizon formed VADI and VADVA as separate data affiliates **based upon this Commission’s BA/GTE Merger requirements**. In accordance with those requirements, VADI and VADVA “own (or lease from an entity other than a [Verizon] incumbent LEC) and operate all new Advanced Services Equipment . . . used to provide Advanced Services (including equipment used to expand the capability or capacity of existing Advanced Services Equipment) put into service by [Verizon] . . .” BA/GTE Merger Order at ¶ 1. Verizon Virginia, under order to remain “structurally separate” from VADI and VADVA, stays out of that business.³ There is absolutely no basis,

³ AT&T correctly points out that Verizon has requested, in CC Docket 98-184, that the FCC accelerate Verizon incumbent telephone companies' right to provide advanced services
(continued...)

therefore, for AT&T's assertion that "Verizon, through VADVA, does deploy advanced services equipment and does provide DSL service." Motion to Compel at 6.

Moreover, AT&T hopes to have its cake and eat it too with regard to VADI. First, in the proceedings that resulted in this Commission's Merger Conditions, AT&T advocated that Verizon's advanced services affiliate be required to "structurally separate" from Verizon. *See* Comments of AT&T Corp. on Applicants' Revisions to Proposed Merger Conditions, *In the Matter of GTE Corp. and Bell Atlantic Corp. for Consent to Transfer of Control*, CC Docket No. 98-184, at 13 (May 5, 2000). Now, when it suits AT&T, AT&T argues that Verizon Virginia's corporate relationship with these data affiliates is sufficient to allow the Commission to require those affiliates to turn over competitive information in this proceeding.

Finally, AT&T's reliance on *ASCENT v. Federal Communications Commission*, 235 F.3d 662 (D.C. Cir. 2001), is misplaced. In *ASCENT*, the D.C. Circuit Court did not address whether an ILEC that was the sole party to a § 252 arbitration had to respond to discovery requests concerning services being provided by a separate data affiliate. Instead, the court found that a separate data affiliate was a successor of the newly-merged SBC/Ameritech ILEC, even though the Commission ordered SBC/Ameritech to create the separate affiliate as part of the Commission's merger requirements. *Id.* at 667. Consequently, SBC/Ameritech's separate data affiliate was subject to the same resale and unbundling requirements as SBC/Ameritech.

directly, without using the separate advanced services affiliate as required by the Bell Atlantic-GTE merger order. On May 31, 2001, a Public Notice was released establishing the comment and reply comment cycle. Comments were filed June 14, 2001 and reply comments were filed on June 28, 2001. In any event, once the Merger Order's separate data affiliate requirement is no longer effective, Verizon Virginia will then need to seek any necessary regulatory approval from the Virginia State Corporation Commission.

The present dispute between Verizon Virginia and AT&T, however, is much more narrow. The issue before the Commission is not whether VADI is a successor to Verizon and, therefore, subject to the requirements of the Act. The issue before the Commission is merely the scope of permissible discovery in a case in which VADI is not a party. Verizon Virginia objects to AT&T's discovery requests because they seek discovery from independent corporate affiliates that are not parties to this proceeding. Since there is no basis in the law to grant discovery from a non-party, AT&T's motion should be denied.

C. Information Unrelated To Verizon Virginia's Operations In Virginia Is Outside The Scope Of Permissible Discovery.

1. *Information that relates exclusively to other states is not discoverable.*

Information not related to the market for telecommunications services in Virginia is neither relevant to the issues raised in this proceeding nor likely to lead to the discovery of admissible evidence. *See* 47 CFR § 1.311(b). In fact, the Virginia State Corporation Commission ("Virginia SCC") ruled on precisely this issue in the *Joint Petition of Bell Atlantic Corporation and GTE Corporation for Approval of Agreement and Plan of Merger*, Case No. PUA980031 (January 25, 1999).⁴

There, in the context of hearings designed to assess the impact of the proposed Bell Atlantic-GTE merger on competition in Virginia, AT&T sought to discover information about Bell Atlantic's operations outside of the state of Virginia. *Id.* at 4. Bell Atlantic objected to the production of information that did not "directly concern[] the market for telecommunications services in the Commonwealth of Virginia." *Id.* In resolving the dispute, the Virginia SCC's Hearing Examiner held:

⁴ *See also* ruling of the Chief Hearing Examiner in Case No. PUC990100 (August 23, 1999).

As discussed above, the standard for discovery before the Commission is broad. While I agree that information directly related to competing against other local exchange companies outside of Virginia lacks relevance to this proceeding, I also agree that broadly formulated, executive level plans may be relevant. Consequently, Bell Atlantic's general objection should be reformulated to exclude information that is not "related to" the market for telecommunications services in the Commonwealth.⁵

Through its general objections, Verizon Virginia has adopted precisely the same position in this proceeding as that taken by Bell Atlantic Virginia before the Virginia SCC. That is, Verizon Virginia does not seek to avoid producing plans or other such documents that are relevant to operations in several states, including Virginia. Rather, Verizon Virginia seeks only to avoid producing information that is not related to its operations in Virginia. For example, AT&T has asked several questions about numbers of loops, numbers of central offices, and percentage of collocations containing advanced services equipment that have been provided by Verizon entities outside of Virginia. Unlike policy statements that govern operations in several states, including Virginia, this type of volume-related information is entirely irrelevant to this proceeding.

The Virginia SCC's reasoning in the merger case was sound and should be adopted by the Commission in this proceeding. Just as AT&T's discovery requests related to the operations of Bell Atlantic outside of Virginia were irrelevant in determining whether the level of local competition would remain vibrant in Virginia following the merger, AT&T's extra-jurisdictional discovery requests are also irrelevant in the arbitration of a local interconnection agreement between AT&T and Verizon Virginia.

⁵ AT&T did not appeal from this ruling by the Hearing Examiner.

2. *Information related to the provisioning of advanced services in other states is not discoverable.*

What VADI does or plans to do in other jurisdictions simply is not relevant to the issues raised in this arbitration. As discussed above, Verizon Virginia cannot offer advanced services. Verizon Virginia will, in accordance with its proposed interconnection agreement and applicable law, supply AT&T with the means to offer advanced services. Nevertheless, what VADI deploys or plans to deploy in other jurisdictions has no bearing on the terms of the agreement between AT&T and Verizon Virginia in Virginia.

3. *Production of information regarding operations throughout the entire Verizon footprint would be unduly burdensome on Verizon Virginia.*

Requiring Verizon Virginia to provide AT&T with the requested information for the entire Verizon footprint is unnecessary and burdensome. As AT&T has pointed out, this Commission's discovery rules mirror Rule 26 of the Federal Rules of Civil Procedure. Under the Federal Rules of Civil Procedure, a court is authorized to limit discovery if it determines that "the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues." Fed. R. Civ. Pro. 26(b)(2)(iii). AT&T's requests concerning operations outside Virginia do not meet the Rule 26 standard. The burden on Verizon Virginia of retrieving and producing irrelevant information from independent Verizon affiliates throughout the entire Verizon footprint far outweighs any benefit to AT&T.⁶

⁶ Verizon has ILEC and VADI affiliate operations in over 30 states.

4. *Contrary to AT&T's mischaracterization, the Commission has not decreed that out-of-state information is relevant to this proceeding.*

AT&T has grossly mischaracterized Chief Atwood's March 27, 2001 Letter Ruling by claiming that "[t]his Commission has already established the relevance of discovery into matters in other jurisdictions by permitting parties to identify data responses submitted in other jurisdictions." Motion to Compel at 4. The Letter Ruling includes no such finding; rather, it states as follows:

Fourth, recognizing that some of the material subject to discovery may already be in the possession, custody or control of the petitioners, they ask that Verizon agree to the use of such materials in this proceeding, while allowing for necessary protections for confidential information. **We understand the parties to have agreed, during the pre-filing conference, that the petitioners will submit a list of the specific documents in this category that they seek to use in this proceeding. We further understand that, within 7 days of receipt of such a request, Verizon will either consent or object to use of the enumerated documents in this proceeding.** If this does not comport with the understanding of any party, please contact us immediately.

March 27, 2001 Letter Ruling, at 2 (emphasis added).

Obviously, the Letter Ruling does not constitute a finding regarding the scope of permissible discovery in this case. To the contrary, it expressly provides Verizon Virginia with the right to object to the introduction of out-of-state information designated by AT&T that AT&T may already possess. To date, AT&T has made no such designations.

AT&T argues that Verizon Virginia is being inconsistent when it attempts to import plans and practices derived from industry collaboratives in other jurisdictions, yet seeks to avoid production of information regarding operations beyond Virginia. AT&T compares apples and oranges here. In an effort to resolve a number of issues that have been settled in other jurisdictions, Verizon Virginia has suggested the adoption in Virginia of standards that have been

developed after extensive collaboration between Verizon Virginia affiliates and various CLECs, such as the New York Performance Assurance Plan. Adopting these standards in Virginia is beneficial to both Verizon Virginia and AT&T, and Verizon Virginia has not objected to producing documents that are relevant to these standards. AT&T, instead, seeks information relating to the number of different kinds of UNE's that Verizon has provided throughout its footprint. This information is not relevant to any issue in these arbitrations. .

IV. CONCLUSION

For all of the reasons set forth above, the Commission should deny AT&T's untimely Motion to Compel Answers to AT&T's First Set of Data Requests.

Respectfully submitted,

Karen Zacharia / by permission
cwc

Michael E. Glover

Of Counsel

Richard D. Gary
Kelly L. Faglioni
Hunton & Williams
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219-4074
(804) 788-8200

Catherine Kane Ronis
Wilmer, Cutler & Pickering, LLP
2445 M Street, NW
Washington, DC 20037-1420

Of Counsel

Dated: July 5, 2001

Karen Zacharia
David Hall
1320 North Court House Road
Eighth Floor
Arlington, Virginia 22201
(703) 974-2804

Lydia R. Pulley
600 E. Main St., 11th Floor Richmond, VA
23233
(804) 772-1547

Attorneys for Verizon

CERTIFICATE OF SERVICE

I do hereby certify that true and accurate copies of the foregoing Opposition to AT&T's Motion to Compel were served electronically and by overnight mail this 5th day of July, 2001, to:

Mark A. Keffer
Dan W. Long
Stephanie Baldanzi
AT&T
3033 Chain Bridge Road
Oakton, Virginia 22185

and

David Levy
Sidley & Austin
1722 Eye Street, N.W.
Washington, D.C. 20006

